PRC Labour Law - Bitesize

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How do I differentiate between a work-related injury and one that is not?

Under the PRC law, generally an employee's injury falling within any of the following categories will be considered to be work-related:

- The employee is injured when working on work premises during working hours;
- The employee is injured when handling work issues on premises, before or after his/her working hours;
- The employee's injury is attributable to violence or an accident arising from his/her performance of work duties during working hours on work premises;
- The employee suffers from an occupational disease (i.e. a disease suffered by the employee arising from his/her exposure to dust, radiomaterial, or other poisonous or hazardous substance in his/her work);
- The employee is injured or goes missing when he/she is out performing work duties;
- The employee's injury is attributable to a automobile accident travelling to and from work;
- The employee dies, or dies within 48 hours after ineffective treatment, as a result of an outbreak of disease during work hours on the work premises;
- The employee is injured when he/she is engaged in rescue and relief work or other activities for protection of State interest or public interest;
- An employee, who has served in the army and has obtained a Disabled Soldier Certificate certifying his/her disability for wounds in the war or wounds arising from performance of their duty, suffers from a recurrence of such old wound.

Whether an employee's injury is deemed to be work-related is ultimately up to the discretion of the applicable division under the local Human Resources and Social Security Bureau.

What are my obligations as an employer in respect of the certification of work-related injury above?

Within 30 days after the employee is injured or is diagnosed as suffering from an occupational disease, the employer should apply to the local Labour Bureau in the locality where it has its employee enrolled under the local social insurance scheme, to obtain a certification that the injury or disease is (or is not) work-related.

The employee (or his/her direct relative) or the union may also apply within one year after the employee is injured or is diagnosed to have suffered from an occupational disease, if the company fails to make the application mentioned above within 30 days.

What is the "penalty" for, or consequence of, not applying within the 30 days mentioned above?

The "penalty" or consequence will depend on whether the employee's injury is certified to be a work-related. If it is a work-related injury, the employer must bear the additional costs incurred for treatment of the employee's injury or disease, which would otherwise have been borne by the local work-related injury insurance foundation.

Does the employer owe the same obligations to apply for certification of a work-related injury for a consultant (as opposed to employee)?

Legally, the employer only owes such obligations to its employees.

However, if the injured consultant can prove that he/she was actually an employee, his/her application regarding work-related injury certification may be approved. For example, he/she signed an acknowledgement of the employee handbook and/or other company policies applicable to employees, or he/she was required to report to and work under supervision of certain employee of the company, etc.

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